



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



March 24, 2003

Mr. C. William Johnson
3 Little Rob Road
Atkinson, NH 03811

**NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 02-013 (WETLANDS)**

Dear Mr. Johnson:

As you are aware, by Notice of Proposed Administrative Fine No. AF 02-013 issued March 19, 2002, the Water Division sought administrative fines totaling \$5,500 against you for alleged violations of RSA 482-A, the state wetlands statute, arising from unauthorized work conducted on property located on 3 Little Rob Road, Atkinson, NH ("the Property"). Pursuant to RSA 482-A:13, and based upon my review of the evidence presented at the hearing held on this matter on March 3, 2003, I have concluded that a fine of \$5,500 is appropriate as set forth below:

- ▶ A fine in the amount of \$1,000 is imposed against you for dredging and filling approximately 5,000 square feet of jurisdictional area without a permit from DES.
- ▶ A fine in the amount of \$1,500 is imposed against you for dredging a 150' x 100' pond without a permit from DES.
- ▶ A fine in the amount of \$2,000 is imposed against you for dredging and filling approximately 400 linear feet of a perennial stream without a permit from DES.
- ▶ A fine in the amount of \$500 is imposed against you for dredging approximately 300 square feet of jurisdictional area surrounding an old dam on the Property without a permit from DES.
- ▶ A fine in the amount of \$500 is imposed against you for dredging and filling approximately 200 square feet of jurisdictional area surrounding a culvert on the Property without a permit from DES.

The \$5,500 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Wetlands are regulated under RSA 482-A. The purpose of this statute is to protect wetlands from unregulated alteration because the state recognizes that these areas are a valuable resource that provide wildlife habitats, storm water retention, water supplies, and nutrient and pollutant filtering. There are many types of wetlands in New Hampshire: swamps, bogs, wet meadows, rivers, and lakes. Under the statute, specific areas of the Property are considered wetlands and are under wetlands jurisdiction. You are liable for dredging and filling in wetlands on the Property, hence, negatively impacting the wetlands and the environment.

This decision is based on the following findings and conclusions:

1. C. William Johnson owns the land located at 3 Little Rob Road, Atkinson, NH, and more particularly described on the Atkinson tax maps as Map 9, Lot 67 ("the Property"). Bryant Brook, a perennial stream, flows through the Property.
2. RSA 482-A:3, I provides, in part, that no person shall excavate, remove, fill, or dredge in wetlands without a permit from DES.
3. RSA 482-A:14, III provides that failure, neglect, or refusal to comply with RSA 482-A or rules adopted under this chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
4. On November 28, 2000, DES received a complaint from the Atkinson Conservation Commission that fill was being placed in wetlands on the Property.
5. On December 11, 2000, DES inspected the Property with Mr. Johnson and found that he was dredging and filling in wetlands on the Property without a permit from DES. Staff observed that the stream had been excavated and an earthen dam constructed to create a 100' x 150' pond; approximately 5,000 square feet had been dredged and filled in the stream and adjacent wetlands; 400 linear feet of stream had been dredged and filled; approximately 300 square feet of wetlands surrounding an old dam in disrepair had been dredged; and about 200 square feet of wetlands around a culvert had been dredged and filled.
6. By letter to Mr. Johnson dated December 20, 2000, DES requested that he discontinue all work in the wetlands, except for installing appropriate erosion control measures, until he obtained a wetlands permit from DES.
7. Mr. Johnson failed to submit an application for a wetlands permit.
8. On September 11, 2001, DES reinspected the Property with Mr. Johnson and observed additional work that included further dredging and filling in the wetlands, stream, stream banks, and around the culvert.
9. At the inspection, DES again requested that Mr. Johnson stop doing further work in the wetlands, except for installing erosion control, and to submit an after-the-fact application to DES.
10. On November 14, 2001, DES issued Letter of Deficiency WET 2001-86 ("the LOD") to Mr. Johnson. Mr. Johnson failed to comply with the LOD.
11. Mr. Johnson violated RSA 482-A:3, I and 482-A:14, III by dredging and filling approximately 5,000 square feet of jurisdictional areas without a permit from DES.
12. For a violation of RSA 482-A:3, I and RSA 482-A:14, III, Env-C 614.03(a)(1) authorizes a fine of \$1,000.
13. Mr. Johnson violated RSA 482-A:3, I and 482-A:14, III by dredging a 150' x 100' pond without a permit from DES.
14. For a violation of RSA 482-A:3, I and RSA 482-A:14, III, Env-C 614.04(a)(1) authorizes a fine of \$1,500.

15. Mr. Johnson violated RSA 482-A:3, I and 482-A:14, III by dredging and filling approximately 400 linear feet of a perennial stream without a permit from DES.
16. For a violation of RSA 482-A:3, I and RSA 482-A:14, III, Env-C 614.05(c)(2) authorizes a fine of \$2,000.
17. Mr. Johnson violated RSA 482-A:3, I and 482-A:14, III by dredging approximately 300 square feet of jurisdictional area surrounding an old dam on the Property without a permit from DES.
18. For a violation of RSA 482-A:3, I and RSA 482-A:14, III, Env-C 614.02(a)(2) authorizes a fine of \$500.
19. Mr. Johnson violated RSA 482-A:3, I and 482-A:14, III by dredging and filling approximately 200 square feet of jurisdictional area surrounding a culvert on the Property without a permit from DES.
20. For a violation of RSA 482-A:3, I and RSA 482-A:14, III, Env-C 614.02(a)(2) authorizes a fine a \$500.
21. None of the factors identified in Env-C 601.09(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violations noted in #11,13,15,17, and 19 above because the burden of proof for these factors is on Mr. Johnson and he did not attend or present evidence at the hearing.

You violated RSA 482-A by dredging and filling in wetlands on the Property without first obtaining a permit from DES. Thus, for the reasons discussed above, I have concluded that the \$5,500 fine imposed against you is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with RSA 541 and Env-C 206.

Very truly yours,

COPY

Robert Monaco
Acting Commissioner

Enclosure

cc: Atkinson Conservation Commission
Atkinson Board of Selectmen
Harry T. Stewart, P.E., Director, Water Division
Jennifer Patterson, DOJ/EPB
Mark Harbaugh, Enforcement Attorney
Susan Weiss Alexant, DES Hearings and Rules Attorney
Marjory Swope, NHACC

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source: #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source: #6960, eff 3-25-99